

E-FILED 11-23-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WELLS FARGO BANK, N.A.,

No. C11-05584 HRL

Plaintiff,

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

v.

MARY GRACE S. MENDIOLA; and DOES 1
to 10, inclusive,

REPORT AND RECOMMENDATION

Defendants.

Pro se defendant Mary Grace Mendiola removed this unlawful detainer action from Santa Clara County Superior Court. For the reasons stated below, the undersigned recommends that this action be summarily remanded.

Plaintiff Wells Fargo Bank, N.A. (Wells Fargo) filed this unlawful detainer action in July 2011. According to the complaint, plaintiff acquired the subject property through a foreclosure trustee's sale in June 2011. (Complaint, ¶ 5). The complaint further alleges that on June 9, 2011, plaintiff served defendant with a notice to vacate, but defendant refused to deliver possession of the property. (Id. ¶¶ 7-8).

Removal to federal court is proper where the federal court would have original subject matter jurisdiction over the complaint. 28 U.S.C. § 1441. If, after a court's prompt review of a notice of removal "it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court *shall* make an order for summary remand." 28

1 U.S.C. § 1446(c)(4) (emphasis added). These removal statutes are strictly construed against
2 removal and place the burden on the defendant to demonstrate that removal was proper.
3 Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v.
4 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

5 Defendant contends that removal is proper because “[t]he complaint presents federal
6 questions.” (Notice of Removal at 2). Federal courts have original jurisdiction over civil
7 actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §
8 1331. A claim “arises under” federal law if, based on the “well-pleaded complaint rule,” the
9 plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272
10 (2009). Defenses and counterclaims asserting a federal question do not satisfy this requirement.

11 Id.

12 Here, the record indicates that plaintiff’s complaint states only a claim for unlawful
13 detainer. It does not allege any federal claims whatsoever. (Notice of Removal Ex. A).
14 Defendant argues that plaintiff’s unlawful detainer complaint violates federal law. (Notice of
15 Removal at 2). However, defendant’s allegations in her removal notice or in a response to
16 plaintiff’s complaint cannot provide this court with federal question jurisdiction. Accordingly,
17 defendant has failed to show that removal is proper on account of any federal substantive law.

18 Nor does this court have diversity jurisdiction over the matter. Defendant does not
19 establish diversity of citizenship in her removal notice, and a review of the complaint shows
20 that it specifies that the amount of claimed damages does not exceed \$10,000.00. (Complaint at
21 1). In any event, as a California defendant, Mendiola does not have the right to remove this
22 action to federal court under diversity jurisdiction. 28 U.S.C. § 1441(b) (stating that an action is
23 removable for diversity “only if none of the parties in interest properly joined and served as
24 defendants is a citizen of the State in which such action is brought”).

25 Because the parties have yet to consent to the undersigned’s jurisdiction, this court
26 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned
27 further RECOMMENDS that the newly assigned judge summarily remand the case to Santa
28 Clara County Superior Court. Pursuant to Federal Rule of Civil Procedure 72(b), any party may

1 serve and file objections to this Report and Recommendation within fourteen days after being
2 served.

3 SO ORDERED.

4 Dated: November 23, 2011

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6 HOWARD R. LLOYD
7 UNITED STATES MAGISTRATE JUDGE
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United States District Court
For the Northern District of California

1 5:11-cv-05584-HRL Notice sent by U.S. Mail to:

2 Kevin A. Harris
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3 351 St. Mary Street
Pleasanton, CA 94566

4 Mary Grace Mendiola
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